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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,392	03/08/2004	Mathieu Audet	RP-01366-US3	1894

28735 7590 02/16/2007  
OSLER, HOSKIN & HARCOURT LLP (BRP)  
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CANADA

EXAMINER
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BROWN, DREW J

ART UNIT	PAPER NUMBER
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3616

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/16/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/796,392	<b>Applicant(s)</b> AUDET, MATHIEU	
	<b>Examiner</b> Drew J. Brown	<b>Art Unit</b> 3616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 11/30/06 (amendment).
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7, 8 and 10-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11 and 17 is/are allowed.
- 6) ☒ Claim(s) 1-5, 7, 8, 10, 12-16, and 18-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

This Office Action is in response to the amendment filed on 11/30/06. Claims 1, 7, 10, 11, 15, and 16 have been amended, claims 6 and 9 have been canceled, and new claims 17-20 have been added.

#### *Claim Objections*

1. Claim 18 is objected to because of the following informalities: In line 11, "cargo." should be changed to -cargo;-- . Appropriate correction is required.

#### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-5, 7, 8, 12-16, and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tweet (U.S. Pub. No. 2004/0031640 A1) in view of Hanagan (U.S. Pat. No. 4,953,911).

Tweet discloses a straddle-type vehicle (100) comprising a frame (Figure 1), two wheels in the front (106) defining a front axis, two wheels in the rear (108) defining a rear axis, wherein the wheel base is defined by the front and rear axis is between 55 and 78 inches (paragraph 31). An engine (120) is disposed on the frame for driving at least one of the wheels, handlebars (110) are disposed on the frame for steering at least one of the wheels, a straddle driver seat (112) is disposed on the frame, a straddle passenger seat (114) and a backrest (122) are disposed on the frame rearward of the driver seat, and a cargo rack is disposed rearward of the passenger seat (Figure 4).

Tweet also discloses that each of the wheels includes a low-pressure balloon tire (paragraph 22) but does not disclose that the air pressure is between 1.5 and 4 psi. However, it

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would have been obvious to one having ordinary skill in the art at the time the invention was made to make the pressure between 1.5 and 4 psi in order to provide proper traction on different terrains.

Tweet discloses the claimed invention as discussed above but does not disclose that the passenger seat is transformable between a first configuration to accept a passenger and a second configuration to accept cargo, where the backrest is substantially level with the cargo rack when the backrest is in the second configuration.

Hanagan, however, does disclose a passenger seat (20) that is transformable between a first substantially upright configuration to accept a passenger (Figure 4) and a second substantially horizontal configuration to accept cargo (Figure 1). The backrest is pivotal with respect to the seat portion (Figure 6), and the backrest is substantially level with the cargo rack when the backrest is in the second configuration. A contour of the seat portion and a contour of the backrest of the passenger seat are configured to provide back support for the driver seat when the passenger seat is in the first (Figures 2 and 4) and second (Figures 1 and 2) configuration, respectively. Hanagan also discloses a locking mechanism (60) constructed and arranged to lock the backrest into a desired orientation.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the invention of Tweet in view of the teachings of Hanagan to have a transformable seat so that a variety of sizes and shapes of cargo can be secured to the cargo rack behind the rear seat of the ATV when a passenger is not occupying the seat.

With respect to claim 18, the recitation that the passenger seat is "removable" from the vehicle does not serve to distinguish because it is narrative in form. The recitation is not supported by recitation in the claim of sufficient structure to warrant the presence of the functional language. Further, it has been held that the recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. Accordingly, the passenger seat is "removable" from the vehicle.

4. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tweet in view of Hanagan, and further in view of McNichol, Jr. et al. (U.S. Pat. No. 3,873,127).

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The combination of Tweet and Hanagan discloses the claimed invention as discussed above but does not disclose that an auxiliary rack is mounted to a rear of the backrest such that the auxiliary rack is substantially level with the cargo rack when the backrest is in the horizontal orientation.

McNichol, Jr. et al., however, discloses an auxiliary rack (10) mounted to a backrest (94). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the invention of Tweet in view of the teachings on McNichol, Jr. et al. to have an auxiliary rack mounted to the rear of the backrest so that when the backrest is in the horizontal position, additional storage space is available to transport more cargo without damaging the backrest.

***Allowable Subject Matter***

5. Claims 11 and 17 are allowed.

***Response to Arguments***

6. Applicant's arguments filed on 11/30/06 have been fully considered but they are not persuasive.

On page 7 Applicant argues that the combinations of Tweet and Hanagan fails to disclose that the backrest is substantially level with the cargo rack when the backrest is in the second configuration. However, the Examiner maintains that the rejection is proper because when the backrest of Hanagan is in the horizontal position, it is "substantially" level with the cargo rack of Tweet. It is apparent that the seats of Tweet and Hanagan are of similar size, so the modification would not cause the seat to extend well above the cargo rack. Also, the Examiner notes that even if the backrest is not flush with the cargo rack, larger cargo would still extend across the backrest and provide the same function.

On page 8 Applicant argues that when the cargo rack on the second section of McNichol is configured to receive cargo, the second section is not substantially level with any structure rearward of the passenger seat. However, the prior art of McNichol is only relied upon to teach that the auxiliary rack is attached to the back of the backrest, not that the seat pivots backwards. Hanagan is relied upon to teach the pivoting of the backrest, so when the backrest pivots

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forwardly on top of the seat, the auxiliary frame would in fact be substantially level with the cargo rack.

Also, on pages 7 and 8 Applicant argues that neither Hanagan nor McNichol disclose a cargo rack rearward of the passenger seat. However, the Examiner notes that Hanagan and McNichol are relied upon to teach the details of the seat and the backrest, and Tweet is relied upon to teach the cargo rack being disposed rearward of the passenger seat.

### *Conclusion*

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

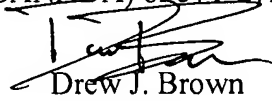
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew J. Brown whose telephone number is 571-272-1362. The examiner can normally be reached on Monday-Thursday from 8 a.m. to 4 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul N. Dickson can be reached on 571-272-6669. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Drew J. Brown  
Examiner  
Art Unit 3616

db  
2/12/07



2/13/07  
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